In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 5585 of 2005
Date of Decision: 24.10.2006

L.P.S. Tomar

…Petitioner

Versus

State of Haryana

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. D.S. Patwalia, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana,
for the respondent.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 4.1.2005 (P-17) whereby the petitioner has been retired prematurely from service in public interest as per the provisions of Rule 3.26(d) of the Punjab Civil Service Rules, Volume-I, Part-I read with Rule 5.32-A (c) of the Punjab Civil Service Rules, Volume-II (as applicable to Haryana) (for brevity, 'the Rules'). The aforementioned impugned order has been actuated on the basis of the recommendations, dated 16.7.2004, of the Officers'

Committee constituted to review the cases of officers of the Haryana Civil Service (Executive Branch) for their retention in Government service beyond the age of 50 years. A further prayer has been made for directing the respondent State to allow the petitioner to continue working as such till attaining the age of superannuation.

Facts of the case may be first noticed. The petitioner belongs to the 1980 Batch of the Haryana Civil Service (Executive Branch). It is claimed that he has held several important and sensitive assignments from time to time and his work and conduct has always been appreciated by his superiors on several occasions, details of which have been given in para Nos. 2 to 4 of the writ petition (P/1A to P/1K). It has been asserted that while the petitioner was posted as Managing Director of Bhuna Cooperative Sugar Mills, Hisar, with effect from 1.4.1993, he took some harsh steps against some erring officials of the mills who were creating hindrance in the smooth functioning of the mills due to their union activities. Due to this fact some anonymous complaints were made against the petitioner, however, the same were not proved as is evident from the letter dated 23.7.1994, inasmuch as, the allegations were inquired into by the Deputy Commissioner, Hisar-cum-Chairman of the Sugar Mills (P-3).

In the ACR for the year 1993-94, the competent authority recorded adverse remarks against the petitioner, which were duly conveyed to him vide communication dated 5.6.1996 (P-4) and reads as under:

" The following adverse remarks have been incorporated in the Annual Confidential Report written for the year 1993-94 when you were posted as Managing Director, Cooperative Sugar Mill, Bhuna:-

There is still scope for bringing out latent potential in him. In the sphere of coordination and control, especially of subordinates the officer needs to exert himself more. During the period under report, despite executing to the fullest, the Sugar Mills failed to really take off, primarily, because of the excessive dependency and faith that Shri L.P.S. Tomar accorded to his subordinates. In an organization where the primary responsibility relates to men management; Shri L.P.S. Tomar failed miserably.

If the mill is in a sorry state of affairs, it is largely because of this officer. He mismanaged the affairs of the mills so badly during his stay that I doubt if the mills can not be brought back on rails at all. He made no efforts to develop cane in the area. *He always gave misleading and false information. Losses have been rising. He is totally unreliable. There have been serious complaints against him which were enquired and found true.* In fact, the Deputy Commissioner

himself has submitted some of the reports. *All the complaints have now been sent to the Chief Secretary for detailed enquiry and further necessary action. It is my unfortunate duty to say that such officers are a blot in the name of the service.* The appraisal report submitted by the officer even does not depict factually correct position. *Therefore, I will grade him as a 'Below Average' officer with highly doubtful integrity.*" (Emphasis added)

Vide letter dated 27.5.1996 (P-7), the petitioner was communicated the following adverse remarks which were recorded in the ACR for the year 1994-95:-

" The following adverse remarks have been incorporated in the Annual Confidential Report written for the year 1993-94 (1994-95?) when you were posted as Managing Director, Cooperative Sugar Mill, Bhuna:-

During the period under report a large number of skeletons were discovered in the cupboard of Sh. L.P.S. Tomar necessitating a full-fledged inquiry, the results of which are yet to come in. Running a Sugar Mills in Primarily a man-management process since the primary in-put i.e. sugarcane comes from the field of farmers. Here, *Shri Tomar enjoyed a very poor reputation, his control*

over his subordinate was also extremely poor as a result of which fictitious figures regarding fresh plantation made a mockery of the planning process. *His knowledge of rules and regulations was also extremely poor* as a result of which the Mills was put to a lot of unnecessary local complications. *Regarding his integrity and honesty, there is a big question mark of doubt which will remain till the result of the pending inquiry directed against him are not moved.*

I broadly agree with the views of the Reporting Officer. However, since I have looked into his work for very close quarters, I have found his working as most scandalous. I doubt if he has done anything right in the mills. A case of serious irregularities is already under enquiry and another case of blatant violation of law and misuse of position has come to light. In fact, I am of considered opinion that if his entire working is investigated, more serious irregularities and malpractices would come to light. In fact, such an officer is a blot on the name of the services and is absolutely unfit to be posted in a commercial organization. For him, law, rules and regulations have no meaning and has considered the mills as

his field. His reputation for honesty and integrity has been very bad. Therefore, I would grade him as a 'Below Average' Officer." (Emphasis added)

On 8.8.1996, the petitioner submitted an appeal to the Chief Secretary to Government of Haryana, against the averse remarks recorded for the year 1993-94, which was rejected being time barred, vide order dated 18.10.1996 (P-6). Against the adverse remarks recorded for the year 1994-95, the petitioner made another appeal dated 28.7.1996 (P-8), which was also rejected being time barred, vide separate order dated 18.10.1996 (P-9).

Vide letter dated 11.3.1999 (P-14), the petitioner was also communicated the following adverse remarks, which were recorded in the ACR for the year 1997-98:-

" The following adverse remarks have been incorporated in the Annual Confidential report for the year 1997-98 period 22.5.97 to 31.3.98 written for the work done by you as Sub Divisional Officer (Civil), Guhla wherein your overall grading has been assessed as 'Average':-

"Even though the officer is intelligent, he has little interest in his work. His attitude is casual and he cannot be relied upon for sensitive jobs. He has very little control over his subordinates.

His knowledge of revenue law is not upto the mark. The quality of court orders left much to be desired. He was also very casual in writing his orders after their announcements. In some cases the delay was more than 6 months and there were number of complaints from the litigants/counsels in this regard.

He did not enjoy the confidence of the people of the Sub Division which was due to his lack of interest in solving their problems.

His integrity was also doubtful and there were a large number of complaints in this regard. In one such instance an illegal store of Gas Cylinders was sealed by him, but the seal was broken at his instance without taking any action/without informing his seniors. There was a complaint of illegal gratification in this case and the matter is under investigation by the Vigilance Department." (Emphasis added)

It is appropriate to mention here that against the above mentioned adverse remarks for the year 1997-98, the petitioner is stated to have made a representation on 4.6.1999, however, copy of the same has not been placed on record and it has been asserted that the same is still pending consideration of the competent authority.

For the period from 21.10.1999 to 31.3.2000, the following adverse remarks, which were recorded in the ACR for the year 1999-2000, were conveyed to the petitioner:

> "I had reason for dissatisfaction with the performance of Shri Tomar, particularly with regard to his lack of efforts for stopping of unauthorized passenger vehicles right outside the bus stand at Panipat. Repeated direction to him in this regard had no effect. I found buses without permit operating from inside the bus stand. The officer should strive to prevent such things under his jurisdiction so that his image and reputation is not damaged."

Feeling aggrieved against the orders dated 18.10.1996 (P-6 and P-9 respectively) rejecting the appeals of the petitioner against the adverse remarks for the years 1993-94 and 1994-95, he filed C.W.P. No. 7193 of 1999 in this Court, which was disposed of vide order dated 5.2.2001 and the following order was passed:-

> "In view of the circumstances, we dispose of the Petition finally with the direction to the respondent to consider and decide the representation, Annexure P-5, P-8 and P-10 in accordance with law, by a speaking order, ignoring the technical objection of limitation as the delay is self explained in the representation Annexure P-10. Needful shall be done within six months of the receipt of the certified copy of this order."

In compliance to the aforementioned order dated 5.2.2001, the competent authority i.e. the Chief Secretary to Government, Haryana, passed two separate orders dated 27.7.2001 (P-11 and P-12 respectively) and rejected the representation made by the petitioner.

It would be appropriate to mention here that on the basis of aforementioned adverse remarks raising of serious doubts about the integrity of the petitioner, a vigilance inquiry was conducted against the petitioner by the State Vigilance Bureau and on the basis of the report of the Vigilance Bureau, he was charge sheeted under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (for brevity, 'the 1987 Rules'), on 8.6.2000 (P-13). In the charge sheet, allegations of financial irregularities were levelled against the petitioner. He was served another charge sheet dated 17.8.2001, under Rule 7 of the 1987 Rules, with the allegations of accepting illegal gratification in the incident of gas cylinders as recorded in the adverse remarks for the year 1997-98, to which he submitted his reply on 23.11.2001. It has been asserted that a case FIR No. 2, dated 8.2.1999 was also registered under the provisions of Prevention of Corruption Act, 1988. However, the learned Special Judge, Kaithal, vide order dated 21.1.2004, giving the benefit of doubt, acquitted the petitioner of the charges framed against him. Since no departmental inquiry in pursuance to the charge sheet dated 17.8.2001, was commenced, the petitioner after his acquittal in the

criminal case submitted a representation dated 6.8.2004 for withdrawal of the aforementioned charge sheet.

The petitioner filed yet another writ petition in this Court, bearing C.W.P. No. 14075 of 2002, challenging the rejection orders of his representation dated 27.7.2001 (P-11 and P-12). However, the aforementioned writ petition has been dismissed as pre-mature vide order dated 4.9.2002 (P-15), inasmuch as, the counsel for the petitioner made a prayer that the issues raised in the said writ petition were subject matter of enquiry and the writ petition be dismissed as pre-mature with liberty to file a fresh one in case the petitioner is exonerated in the enquiry proceedings.

On coming to know that he was going to be compulsorily retired on attaining the age of 50 years on the basis of the recommendations of the Officers' Committee constituted to review the cases of officers of the Haryana Civil Service (Executive Branch) for their retention in Government service beyond the age of 50 years, the petitioner made a representation dated 27.9.2004 (P-16) and requested to take into consideration the entire facts before taking a final decision. However, on 4.1.2005, the impugned order has been passed whereby the petitioner has been retired prematurely from service in public interest as per the provisions of Rule 3.26(d) read with Rule 5.32-A (c) of the Rules and he has been ordered to be compulsorily retired by giving three months notice on attaining the age of 50 years.

In the written statement the stand taken by the respondent is that the petitioner has been rightly retired prematurely on attaining the age of 50 years, inasmuch as, there were entries of doubtful integrity in his service record. It has further been claimed that the action of the respondent to retire the petitioner prematurely is in public interest as per the provisions of Rule 3.26(d) of the Punjab Civil Services Rules, Volume-I, Part-I read with Rule 5.32(c) of the Punjab Civil Services Rules, Volume-II (as applicable to Haryana). It has also been asserted that the adverse remarks recorded in the ACRs of the petitioner for the years 1993-94, 1994-95 and 1997-98 were conveyed to him where his integrity has been doubted. The representations made by the petitioner have been rejected. On account of the fact that integrity of the petitioner was doubtful, he was given three months notice to retire from service as per the Rules, which is the order impugned in the instant petition. The aforementioned order, dated 4.1.2005 (P-17) reads as under:-

> " Whereas the Officers Committee constituted to review the cases of HCS (Ex. Br.) Officers for retaining them in Government Service beyond the age of 50 yers, reviewed the service record of Shri L.P.S. Tomar, HCS in its meeting held on 16.7.2004 and on the basis of his overall performance as well as service record recommended that the Sh. L.P.S. Tomar may be retired from Government service by giving him three months' notice.

> Whereas the Governor of Haryana, after duly considering the aforesaid recommendation of Officers Committee, is of the view that it is in public interest to retire Sh. L.P.S. Tomar, HCS from Government service after attaining the age of fifty years, by giving him three months' notice.
>
> 2. Now, therefore, in pursuance of the provisions contained in rule 3.26(d) of the Punjab Civil Services Rules, Volume-I, Part-I and Rule 5.32-A(c) of the Punjab Civil Services Rules, Volume-II, as applicable to the State of Haryana, the Governor of Haryana in public interest orders that Sh. L.P.S. Tomar, HCS shall stand retired from service under the State Government of Haryana on the expiry of the period of three months from the date of receipt of this order by him."

It is appropriate to mention here that in pursuance to the order dated 4.1.2005, on completion of notice period of three months, the petitioner was retired from Government service w.e.f. 8.4.2005 (FN), vide order dated 7.4.2005 (R/2).

Having heard the learned counsel for the parties at a considerable length and perusing the averments made by them along with annexures, we are of the considered view that this petition is liable to be dismissed. It would be pertinent to make a reference to the relevant provisions of Rule 3.26(d) of the Punjab Civil Services Rules, Volume-I, Part-I and Rule 5.32-A(c) of the Punjab Civil

Services Rules, Volume-II (as applicable to Haryana), which are reproduced hereunder:-

> "3.26(d) The appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government employee, other than Class IV Government employee by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:-
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> (i) If he is in class I or class II Service or post and had entered Government service, before attaining the age of thirty five years, after he has attained the age of fifty year; and
>
> (ii) (a) If he is in class III Service or post, or
>
> (b) If he is class I or Class II Service or post and entered Government service after attaining the age of thirty-five years;
>
> after he has attained the age of fifty five years.
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> The Government employee would stand retired immediately on payment of three months' pay and allowances in lieu of the notice period and will not be in service thereafter."
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"5.32-A. The rule for the grant of retiring pensions is as follows:--

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) A retiring pension is also granted to a Government employee other than a Class IV Government employee,--

(1) who is retired by the appointing authority by giving him a notice of not less than three months in writing,--

(i) If he is in class I or class II service or post and had enacted Govt. service before attaining the age of thirty-five years, after he has attained the age of fifty years; and

(ii)(a) If he is in class III service or post; or

(b) If he is in Class I or class II service or post and entered Govt. service after attaining the age of thirty five years.

after he has attained the age of fifty five years;

(2) Who, if from category (1) above retires on or after attaining the age of fifty years, or if from category (1)(ii) above retires on/or after attaining the age of fifty five years, by giving a notice of not less than three months, in writing, of his intention to retire, to the appointing authority:

Provided that where the notice is given before attaining the age of fifty years or fifty five years, as the case may, it shall be given effect to from a date not earlier than the date on which the age of fifty years, or fifty five years, as the case may be is attained.

Note.-- Appointing authority retains an absolute right to retire any Govt. employee referred to above on or after he has attained the age of fifty years, or fifty five years, as the case may be, without assigning any reason. A corresponding right is also available to such a Govt. employee to retire on or after he has attained the age of fifty years or fifty five years, as the case may be."

According to Rule 3.26 (d) an Appointing Authority has been clothed with absolute power to retire a Government employee by giving him notice of not less than three months in writing or three months' pay and allowances in lieu thereof if such an employee is in Class-I or Class-II service or post if he has attained the age of 55 years, provided that if he has entered the Government service when he was more than 35 years of age. Such an employee could also be retired at the age of 50 years if he has entered the service before attaining the age of 35 years. Rule 5.32A(c) regulate retiring pension, which is to be granted to such an employee.

A perusal of the ACRs of the petitioner categorically shows that the integrity of the petitioner in respect of the years 1993-

94, 1994-95 and 1997-98 has remained doubtful. There is no room to entertain any doubt with regard to the veracity of the statement made on the basis of record. It is well settled that if integrity of an employee is doubted even once then such an employee may have to be chopped off as a deadwood, which is in larger public interest. The aforementioned proposition has repeatedly been considered by Hon'ble the Supreme Court. In **Baikuntha Nath Das v. Chief District Medical Officer, Baripada, (1992) 2 SCC 299**, the whole earlier case law was reviewed and following five propositions were extracted and the same reads as under:-

> "34. The following principles emerge from the above discussion:
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> (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
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> (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
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> (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an

appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary – in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That

circumstance by itself cannot be a basis for interference." (Emphasis supplied)

It is equally well settled that once there is an entry of 'integrity doubtful' in the service record of an employee then it is considered to be in larger public interest to retire such a person prematurely. In that regard, reliance may be placed to the judgments of Hon'ble the Supreme Court in the cases of **Union of India v. Ajoy Kumar Patnaik, (1995) 6 SCC 442** and **Jugal Chandra Saikia v. State of Assam, (2003) 4 SCC 59**. In para 5 of the judgment in Jugal Chandra Saikia's case (supra) it has been noticed that the review committee had concluded that the delinquent employee had outlived its utility and was of doubtful integrity. In Jugal Chandra Saikia's case (supra), Hon'ble the Supreme has followed and applied the principles of law as laid down in Baikuntha Nath Das's case (supra).

When the facts of the present case are examined in the light of the principles laid down by Hon'ble the Supreme Court in the aforementioned judgments, no doubt is left that the impugned order dated 4.1.2005 (P-17) as well as the subsequent order dated 7.4.2005 (R/2) deserves to be upheld as the same have been passed in larger public interest because it seeks to get rid of an inefficient and dishonest officer. The impugned order has been passed in consonance with the requirements of Rule 5.32-A (c) and Rules 3.26 (d) as has already been observed in the preceding paras. Therefore, there is no merit in this petition.

In view of above, the writ petition fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

October 24, 2006

Pkapoor